

Appendix 4 – Exercises in Legal Analysis

Exercise 1. Explaining the Law: Analogy, Distinction, and Precedent

Read the materials for the Closed Universe Office Memorandum Assignment in Appendix 5.A. of these Casebook Connect Resources. The only two Arizona cases provided in the materials, *Henderson* and *Fogleman*, deny any award of damages for emotional distress. The only case in your materials that approves of such an award for breach of contract is *Browning*, an early decision from another jurisdiction. Fully explain how a judge or advocate could distinguish the facts of *Henderson* and *Fogleman* from *Araiza's* case, and then could analogize the facts of her case to those of *Browning*. Further explain how dicta in *Henderson* and *Fogleman* support an analogy to *Browning*.

Exercise 2 – Legal Policy and Application to Facts

Cheryl Watkins, a capable licensed pilot, retained Flight Ready, a private aircraft service, to maintain her single-engine private plane based at Palm City Airport in the State of Calzona. At 6:30 a.m., she took off from Palm City in route to a business meeting in a nearby city. Shortly after take-off, Watkins noticed that the plane was intermittently threatening to stall, even though she knew its fuel tank was full. She spent ten minutes trying to determine the nature of the problem so that she could remedy it from the cockpit. Failing to determine the problem, and reasonably fearing that she could not safely reach her destination, Watkins attempted a risky landing on the freeway, shortly before morning rush hour. While touching down, her wing clipped a semi-truck and trailer, cartwheeled into the adjacent desert, and burst into flames. Watkins was killed on the initial impact with the desert floor. A tape recorder found in the wreckage had recorded Watkins's comments during the emergency, helping investigators to reconstruct the events.

In a wrongful death action brought by Watkins's survivors in Calzona, expert testimony revealed the nature of the problem in the plane. After hearing all the evidence, the jury answered several questions called "special interrogatories," submitted to it by the court. Specifically, the jury found that personnel for Flight Ready had negligently repaired the fuel line in Watkins's aircraft, restricting flow from the full fuel tank. The jury also found that the signs of stalling caused by this restriction, though alarming, would not have caused the aircraft to stall and crash in the time it would have taken Watkins to return to the Palm City Airport and secure clearance for an emergency landing. Even in the event of an unlikely stall, the jury further found that Watkins likely could have glided to a safe landing at the Palm City Airport. The jury thus concluded that Watkins also acted negligently, by delaying her return to the airport and then attempting a risky landing on the freeway. Following an instruction based on the doctrine of "contributory negligence," the jury denied Watkins's survivors any recovery.

Under the traditional common law doctrine of contributory negligence, a victim of a tort is precluded from recovering damages from the tortfeasor if the victim negligently contributed to her own injuries. At the time of trial, Calzona courts still applied the doctrine of contributory negligence as a defense in a tort action brought either by the victim or by her survivors. Accordingly, the trial court had rejected a jury instruction proposed by counsel for the plaintiffs that would have permitted the jury to apply the doctrine of "pure comparative negligence." Under the proposed instruction, Watkins's own negligence would not preclude the plaintiffs

from all recovery; instead, their recovery would simply be diminished in proportion to which Watkins's own negligence contributed to her death.

In class discussion or a written essay, respond to the following questions:

a. In the process of developing its common law, should the Calzona Supreme Court abandon its contributory negligence doctrine by adopting a pure comparative negligence scheme? Discuss the policy arguments supporting both sides of this issue, as well as the effect of stare decisis on this analysis.

b. Under a modified comparative fault system, a plaintiff would receive the partial recovery allowed by comparative negligence if she is no more than 50 percent at fault but would recover nothing if she is more than 50 percent at fault. As a legislator, would you support legislation that replaced the common law doctrine of contributory negligence with modified comparative negligence? State your reasons for your support or opposition.

c. How would a pure or a modified comparative negligence standard likely apply to the facts on remand? How should the jury allocate the degree to which Watkins's and Flight Ready's negligence contributed to the crash?